



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Supreme Automation Corporation;
Clay Bernard Systems International
File: B-224158; B-224158.2
Date: January 23, 1987

DIGEST

1. Where a proposal for an automated weapons parts storage and retrieval system fails to demonstrate how it will meet solicitation requirements, but instead merely repeats those requirements and makes a blanket offer of compliance, the General Accounting Office has no basis to question agency's exclusion of it from the competitive range.
2. Agency is not obligated to notify an offeror of deficiencies remaining in its proposal after it has had two opportunities to respond to the agency's questions. The agency need not conduct further discussions once it determines that the proposal has no reasonable chance of being selected for award.
3. Protester alleging bias toward a particular type of equipment has the burden of proof, and where an offeror other than the awardee proposes different equipment and still receives a high technical score, the General Accounting Office regards the protester's allegation that its low score was due to bias as mere speculation.
4. When responsibility-type factors such as experience are included as technical evaluation factors in a request for proposals, as they properly may be, the General Accounting Office will review the agency's evaluation in the same manner as it does any other evaluation, i.e., to determine whether it was reasonable and complied with applicable statutes and regulations.
5. There is no requirement for a cost realism analysis before the award of a competitive, fixed-price contract, and there is no legal basis to challenge a below-cost award to a contractor determined responsible.

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DECISION

Supreme Automation Corporation and Clay Bernard Systems International protest the award of a contract to Applied Retrieval Technology under request for proposals (RFP) No. N00197-86-R-0023. The solicitation, issued by the Naval Ordnance Station, Louisville, Kentucky, is for an automated weapons parts storage and retrieval system. Supreme protests its exclusion from the competitive range, arguing that it met the RFP requirements but was rejected because of the Navy's bias toward Hewlett-Packard equipment. Both Supreme and Clay Bernard challenge the sufficiency of the awardee's experience. Clay Bernard also alleges that the awardee's price is unrealistic and that the agency conducted inadequate discussions.

We deny the protests.

BACKGROUND

The RFP, issued June 3, 1986, and subsequently amended four times, contemplated a fixed-price contract for the development, design, installation, and testing of the automated storage and retrieval system for approximately 25,000 parts. As originally issued, it required a controller ^{1/} consisting of a computer, peripherals, and system software; it did not specify a brand name for the controller, but instead required that it be capable of interfacing with existing Hewlett-Packard equipment. Amendment No. 2 changed the specification to require a Hewlett-Packard computer, peripherals, and software. After Clay Bernard objected to this limitation, the agency, in Amendment No. 4, rescinded the requirement for Hewlett-Packard equipment and reinstated the requirement for a controller capable of interfacing with it.

The RFP required three modes of operation: automatic, semi-automatic, and manual. In the automatic mode, at issue here, parts are stored and retrieved by part and assembly numbers. (Assembly numbers are assigned to complete items, while part numbers are assigned to individual components of an assembly or subassembly.) The solicitation listed evaluation criteria, in descending order of importance, as

^{1/} A controller is a device that directs the operation of other components of a device or system. See Webster's New World Dictionary of Computer Terms (1983); Federal Computer Corp., B-223932, Dec. 10, 1986, 86-2 CPD ¶ ____.

(1) price, (2) compliance with system description, (3) experience, (4) capability, including both personnel and facilities, and (5) proposal clarity and adequacy.

The Navy received five proposals by the July 21 closing date, and, after initial technical evaluation, determined that those of both protesters and the awardee were in the competitive range. Evaluators considered Applied Retrieval's and Clay Bernard's proposals acceptable, and Supreme's susceptible to being made acceptable. The agency notified each of these firms of deficiencies by letters dated by August 14; its notice to Supreme related to tasks to be performed during operation in the automatic mode and to interface capabilities. After a second technical evaluation, the agency determined that Supreme's proposal still did not meet the minimum requirements in these areas and eliminated it from the competitive range. On August 27, the agency requested best and final offers from Applied Retrieval and Clay Bernard.

Supreme protested to the agency, maintaining that its elimination was inconsistent with the letter notifying it of deficiencies in which the agency had stated that its proposal was within the competitive range. After reconsideration, the agency agreed to reopen discussions and requested Supreme to supply additional, specific details covering its proposed system.

Supreme submitted additional material, but after the third evaluation, the Navy determined that the proposal was not technically acceptable. The agency notified the firm that the basis for its exclusion was failure to describe the capabilities required in connection with operation in the automatic mode, specifically the storage and retrieval of parts by assembly number.

After receipt of best and final offers on September 15, the agency rated Applied Retrieval's and Clay Bernard's technical proposals essentially equal; however, Applied Retrieval's price was approximately \$300,000 less than that of Clay Bernard. In light of the importance of price in the evaluation scheme, the agency concluded that Applied Retrieval's proposal was the most advantageous to the government, and it awarded a \$688,490 contract to that firm.

on September 25.^{2/} The protesters have not been debriefed or had access to detailed evaluation findings, but we have reviewed them in camera.

SUPREME'S PROTEST: COMPETITIVE RANGE

In challenging its elimination from the competitive range, Supreme argues that if the agency needed further information, it should have requested it. Supreme alleges that the real reason for the rejection of its proposal was a bias on the part of Navy users for a Hewlett-Packard controller and the fact that Supreme did not offer such a controller.

In reviewing protests concerning competitive range determinations, our function is not to reevaluate proposals and make our own determinations about their merits. Logistic Services International, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173. We will not question a competitive range decision unless a protester shows that it is arbitrary or violates the procurement statutes and regulations. Further, the fact that an agency initially included a proposal in the competitive range does not preclude it from later excluding the proposal from consideration if it no longer has a reasonable chance of being selected for award. Space Communications Co., B-223326.2 et al., Oct. 2, 1986, 65 Comp. Gen. _____ 86-2 CPD ¶ 377.

Here, we find the Navy's exclusion reasonable as well as consistent with the RFP. Our review of Supreme's proposal shows that it consisted primarily of a repetition of specific RFP requirements for operation in the automatic mode and a blanket offer of compliance. The protester's written responses to the Navy's requests for further explanation did not address how the proposed system would comply with RFP requirements. For example, in response to the agency's initial request for information, Supreme submitted two operations manuals. We concur with the agency's finding that neither manual describes the storage and retrieval of parts by assembly number.

^{2/} Supreme protested to our Office on September 16, 1986. On September 24, the agency made the required determination under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(d)(1) (Supp. III 1985), to award notwithstanding the protest. On September 29, Clay Bernard protested to our Office. On October 16, the agency made the required determination to proceed with performance notwithstanding the protests under CICA, 31 U.S.C. § 3553(d)(2).

In response to the agency's September 4 request for a thorough clarification of all capabilities covered by purchase description, paragraph 4.2.2.1 (a description of various tasks that will be required during operation in the automatic mode), the protester provided a written narrative that was primarily a repetition of the RFP. An example is the protester's response to paragraph 4.2.2.1.1.H, which deals with "Contents" and requires that the controller

"Display a report on the CRT [cathode ray tube] which shall include the following information about the specified bin: each part number stored in the bin, the quantity of each, the location of each part within the bin, the size of the container or tote in which each part resides, and an indication of container fullness based on the number and size of totes in the container."

The protester, in its letter of September 8, responded as follows:

"The bin contents task will display a report on the work station CRT for all part numbers currently stored in a bin. This report will include the following: Part number, description, tote size, bin zone location, current quantity, and percentage of fullness."

The protester's failure to indicate how its proposed system would achieve the results required was despite a statement under the evaluation criteria for "compliance with system description" that offerors must provide sufficient technical information to enable the agency to determine the extent to which they met the requirements set forth in the statement of work.

As evidence that its proposed system had the capabilities required by the RFP, the protester refers to portions of its original proposal which stated that:

"[t]he remainder of the paragraph [describing operation of the automatic mode] is acknowledged and no further explanation is considered necessary, since the precise performance required of the controller is set forth . . . In the automatic mode, all of the tasks specified will be furnished."

In connection with the manner in which its proposed software would permit storage and retrieval by assembly numbers, the protester now argues that

"the various scenarios for dealing with assembly numbers from the operator's point of view are very clearly set forth in the solicitation. . . and . . . we will meet each and every one of the required tasks. . . ."

The solicitation, however, specifically stated that "will comply" statements or a reiteration of the requirements would be rated unsatisfactory. Further, under the criterion for "proposal adequacy," the Navy requested innovative ideas. A blanket offer to meet mandatory requirements will not substitute for a detailed description of how a firm plans to do so. XYZTEK Corp., B-214704, Aug. 21, 1984, 84-2 CPD ¶ 204. Certainly it does not demonstrate innovation.

The protester appears to argue that because the system being procured is comprised of off-the-shelf components, detailed statements of capabilities are unnecessary. We do not agree. Although the RFP, as amended, describes the system as comprised of proven off-the-shelf hardware and software, it states that "some modifications will be necessary . . . [for] the successful implementation of a new system in a complex environment. . . ."

Supreme further complains that after it responded to questions, the Navy did not notify it of deficiencies that prevented it from receiving a higher technical score.^{3/} The agency, however, had twice requested amplification in the area of operation in the automatic mode. An agency is not obligated to notify an offeror of deficiencies remaining after an initial opportunity to respond to questions.

^{3/} After the second evaluation, Supreme received a technical score equal to only 34.5 percent of possible points. After the final evaluation, Supreme remained low with 47.9 percent of possible points. Both Clay Bernard and Applied Retrieval received final technical scores in the 80 percent range.

Tidewater Health Evaluation Center, Inc., B-223635.3, Nov. 17, 1986, 86-2 CPD ¶ 563. Rather, an offeror is required to affirmatively demonstrate the merits of its proposal, and it runs the risk of rejection for failure to do so. RCA Service Co., et al., B-218191 et al., May 22, 1985, 85-1 CPD ¶ 585.

We conclude that the Navy was not required to ask further questions or to help Supreme along through a series of negotiations, so as to improve its technical rating until it equaled that of other offerors. See Technical Services Corp., B-216408.2, June 5, 1985, 85-1 CPD ¶ 640.

Moreover, our review of the awardee's proposal establishes that it described in detail how it would store and retrieve parts by assembly number. In response to section 4.2.2.1, for example, the awardee described the configuration of its equipment and its operating software, and it stated precisely how each task listed in the subparagraphs relating to operation in the automatic mode would be performed. We therefore deny Supreme's protest concerning exclusion of its proposal from the competitive range.

SUPREME'S PROTEST: BIAS

As for Supreme's allegation of bias on the part of Navy users in favor of Hewlett-Packard equipment, the protester has the burden of affirmatively proving its case, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Ted L. Biddy & Assocs., Inc., B-209297 et al., Apr. 22, 1983, 83-1 CPD ¶ 441. Here, the record shows that Clay Bernard, which did not offer Hewlett-Packard equipment, was not only included in the competitive range but also rated technically equal to the awardee. We therefore view the allegation of bias as purely speculative, and we deny the protest on this basis.

THE AWARDEE'S EXPERIENCE AND CAPABILITY

Both Clay Bernard and Supreme allege that Applied Retrieval lacks experience in materiel retrieval systems of the size and complexity required by the RFP. The protesters have couched their objections in terms of Applied Retrieval's responsibility, alleging that the contracting officer improperly relied on a year-old preaward survey. Clay

Bernard also refers to a Navy memorandum dated August 4 summarizing evaluation of initial proposals that indicated that the awardee's experience with complex automated systems was deficient.

In our opinion, the protesters are questioning the Navy's evaluation of Applied Retrieval's experience and capability, both of which, as indicated above, were technical evaluation factors. When responsibility-type factors are included in a technical evaluation, as they properly may be, we do not consider them to be, as Clay Bernard supposes, definitive responsibility criteria. As with any other evaluation factor, the question for our Office becomes, whether the agency's evaluation was reasonable and complied with applicable statutes and regulations. See, e.g., Sage Diagnostics, B-222427, July 21, 1986, 86-2 CPD ¶ 85.

Here, under the experience factor, the amended RFP required offerors to demonstrate their prior experience in the design, production, and testing of automated storage and retrieval systems, as well as their specific experience relating to the latest system they had installed. The record shows that in its letter of August 14, i.e., after the date of the memorandum, the Navy requested Applied Retrieval to provide further information on its company history and experience, descriptions of its more complex efforts of the type covered by the RFP, and any additional corporate references; the agency also asked for further information on the use of subcontractors and details on Applied Retrieval's facilities. After the firm supplied additional information, the Navy reevaluated its proposal, awarding it a score of 12.6 out of a possible 15 points for experience and 4.4 out of a possible 5 points for capability. One evaluator specifically stated that the firm's responses indicated that it had installed systems comparable to or even more complex than the Navy's proposed system.

In view of this, and based on our in camera review of the awardee's proposal and responses to discussion questions, we find the agency's evaluation of Applied Retrieval's experience and capability reasonable, and not in violation of any statute or regulation.

CLAY BERNARD'S PROTEST: AWARDEE'S PRICE

Concerning Clay Bernard's protest that the awardee's price is unrealistic, since this competitive solicitation resulted in a fixed-price contract, there was no requirement that the

agency conduct a cost realism study. Corporate Health Examiners, Inc., B-220399.2, June 16, 1986, 86-1 CPD ¶ 552. To the extent Clay Bernard is contending that Applied Retrieval cannot furnish the system at the price offered, there is no legal basis to object to a below-cost award if the offeror is otherwise responsible. Clausing Machine Tools, B-216113, May 13, 1985, 85-1 CPD ¶ 533. Since the contracting officer found Applied Retrieval to be a responsible offeror, we deny the protest on this basis.

CLAY BERNARD'S PROTEST: MEANINGFUL DISCUSSIONS

Finally, at a conference at our Office on October 29, Clay Bernard for the first time objected to the sufficiency of discussions. According to the protester, these were not meaningful because the agency failed to detail for offerors the deficiencies found in their respective proposals; rather, the protester contends, the Navy's letters of August 14 to different offerors were nearly identical. While this basis of protest is arguably untimely, it is in any event without merit. Contrary to the protester's assertion, the letters of August 14, which are included in the record, were not identical, but instead specified separate deficiencies under each evaluation criterion for each offeror.

The protests are denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel